

REMARKS

This supplemental reply is in response to the Final Office Action dated March 3, 2010, and the Advisory Action dated May 7, 2010. Claims 58-62, 64, 65, and 73-85 are pending in the application and stand rejected.

No amendments are presented herein. But reconsideration of the claims in light of the following remarks is respectfully requested.

A Notice of Appeal is being filed concurrently herewith.

Claim Rejections – 35 U.S.C. § 112

Claim 61 was rejected under 35 U.S.C. § 112, first paragraph. Applicant addressed this rejection in its Response of May 10, 2010, but the Advisory Action is silent as to this rejection and Applicant's argument. So Applicant has no idea if the rejection is being maintained or withdrawn, and if being maintained for what reasons. Clarification for the record is respectfully requested.

Claim Rejections – 35 U.S.C. § 103

Claims 73-76, and 78-79 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Richmond et al. (U.S. Patent No. 5,582,252; hereafter "*Richmond*") in view of Brown (U.S. Patent No. 3,524,325; hereafter "*Brown*"); Claim 77 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Richmond* in view of *Brown* and further in view of Moses et al. (U.S. Patent No. 5,615,977; hereafter "*Moses*"); Claims 58-60, 62, 64, 65, and 80-85 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Richmond* in view of *Brown* and *Moses*. Applicant respectfully traverses the finality of the rejection of dependent claims 60, 64, 65, 77, and 83.

Applicant maintains its position stated in its Response of May 10, 2010. Applicant further feels it necessary to note that in rejecting any claims for obviousness, the examiner must clearly explain the pertinence of any cited references in rejecting each claim. 37 C.F.R. § 1.104(2). Moreover, in making a final rejection, the examiner is required to "state all grounds of

rejection then considered applicable to the claims in the application, clearly stating the reasons in support thereof." 37 C.F.R. § 1.113(b). Because the examiner has failed to clearly explain the pertinence of each reference cited against claims 60, 64, 65, 77, and 83, and has also failed to clearly state reasons for rejection thereof, the final rejection of dependent claims 60, 64, 65, 77, and 83 should be withdrawn.

Significantly, claims 60, 77, and 83 require the discrete buoyancy solution to comprise a buoyant coating or a coating of buoyant material. Without providing any support or evidence, the examiner impermissibly concludes that the buoyancy device 42 shown in Figure 3 of *Moses* is a buoyant coating. A "coating" is "a layer of any substance spread over a surface." *See e.g.*, <http://dictionary.reference.com/browse/coating>. *Moses* is devoid of any teaching or suggestion that the buoyancy device 42 is a substance spread over a surface, *i.e.* a coating according to the plain or ordinary meaning of the word. More importantly, *Moses* is devoid of any teaching or suggestion that the buoyancy device 42 has anything more than a buoyant covering, *i.e.* Styrofoam wrap. At best, the examiner is impermissibly adding disclosure to the prior art reference that is not taught, shown, or suggested therein. This is nothing short of hindsight reasoning.

Further, claims 64 and 65 require that the flexure control device be located either proximate or distant to an edge of a topographic feature. None of the examiner's Office actions from February 4, 2009, July 21, 2009, November 18, 2010, March 3, 2010, or May 7, 2010, address claims 64 or 65 on the merits. Instead, the examiner generally rejects claims 64 and 65 in the rejection of base claim 58 without any reference to an edge of a topographic feature. Significantly, neither *Richmond*, *Brown*, nor *Moses* discloses a flexure control device located either proximate or distant to an edge of a topographic feature. As such, claims 64 and 65 are in condition for allowance.

Moreover with regard to claims 64 and 65, the key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. *See*, MPEP § 2142. To wit, the Supreme Court noted that the analysis supporting a rejection under 35 U.S.C. § 103 should be made explicit. MPEP § 2142 *citing KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385, 1396 (2007). The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the

legal conclusion of obviousness." MPEP § 2142 *citing In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). For reasons noted above, the record is devoid of any reason to reject claims 64 and 65. Accordingly, allowance of at least claims 64 and 65 is respectfully requested.


Conclusion

Applicant invites the Examiner to telephone the undersigned attorney if there are any issues outstanding which have not been addressed to the Examiner's satisfaction.

If any fees are due with the noted amendments, the Director is hereby authorized to charge any fees associated with this filing to Deposit Account Number 11-0400 in the name of Kellogg Brown & Root LLC.

Respectfully submitted,

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Date


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